

Shawn M. Lindsay
shawn@jurislawyer.com
Daniel J. Nichols
dan@jurislawyer.com
JurisLaw LLP
Three Centerpointe Drive, Suite 160
Lake Oswego, OR 97035
Telephone: (503) 968-1475

Attorneys for Eyre Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

OREGON FIREARMS FEDERATION, INC.,
et al.,

Plaintiffs,

v.

TINA KOTEK, et al.,

Defendants,

and

OREGON ALLIANCE FOR GUN SAFETY,

Intervenor-Defendant.

MARK FITZ, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

KATERINA B. EYRE, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

and

OREGON ALLIANCE FOR GUN SAFETY,

Case No. 2:22-cv-01815-IM (*Lead Case*)
Case No. 3:22-cv-01859-IM (*Trailing Case*)
Case No. 3:22-cv-01862-IM (*Trailing Case*)
Case No. 3:22-cv-01869-IM (*Trailing Case*)

CONSOLIDATED CASES

**PLAINTIFFS' LEGISLATIVE FACT
EXHIBIT LIST**

Intervenor-Defendant.
DANIEL AZZOPARDI, et al., Plaintiffs, v. ELLEN F. ROSENBLUM, et al., Defendants.

On June 2, 2023, the Court ordered Plaintiffs to separately identify “legislative fact exhibits.” Dkt. 236. Plaintiffs hereby provide that legislative fact exhibit list.

Previously, on May 31, 2023, the Court requested Plaintiffs to “1) Please identify by exhibit number all the marked exhibits that Plaintiff[s] seek[] to introduce as ‘legislative facts’; and 2) for each such ‘legislative fact,’ identify that specific aspect of the constitutional analysis demanded by *Bruen* to which each such legislative fact applies” To answer that May 31 request, on June 1, 2023, Plaintiffs identified those legislative fact exhibits in Dkt. 228. In Plaintiffs’ and Defendants’ Consolidated Proposed Pretrial Order, Plaintiffs outlined the constitutional analysis demanded by *Bruen* as counts and questions. Dkt. 161 (5/10/2023), pp. 6-26. Thus, the June 1 submission by Plaintiffs identified the legislative facts by count and question, as set forth in the Proposed Pretrial Order.¹ Later on June 1, 2023, the Court issued an Order Re: Clarification of Issues for Trial,

¹ For ease of reference, those counts and questions are reproduced here:

COUNT I (Second Amendment Challenge to M114’s Permitting Regime)

Question 1: Do Measure 114’s new restrictions on individuals’ ability to acquire firearms, set forth in Measure 114 §4, §5, §6(3)(c), §6(13)(b), §6(14), §7(3)(d)(B), §8(3)(B)(c), restrict conduct that is presumptively protected by the Second Amendment?

Question 2: Have Defendants proven that Measure 114’s new restrictions on individuals’ ability to acquire firearms, set forth in Measure 114 §4, §5, §6(3)(c), §6(13)(b), §6(14), §7(3)(d)(B), §8(3)(B)(c), are consistent with a longstanding historical tradition of firearm regulation in this country?

Question 3: Are Defendants currently able to implement Measure 114’s restrictions on individuals’ ability to acquire firearms, set forth in Measure 114 §4, §5, §6(3)(c), §6(13)(b), §6(14), §7(3)(d)(B), §8(3)(B)(c), in a manner that allows individuals to obtain the permits that are required to lawfully acquire firearms in Oregon?

COUNT II (Due Process Clause Challenge to M114’s Permitting Regime)

setting forth the Court’s “interpretation of the legal questions it must answer to determine whether Ballot Measure 114 (‘BM 114’) violates the Second Amendment.” Dkt. 235, p. 1. The Court’s Order contains the same counts, but divides and describes the questions differently than Plaintiffs’ description in the Proposed Pretrial Order. For clarity, Plaintiffs include references both to the Court’s Clarification of Issue for Trial (Dkt. 235) and to Plaintiffs’ description of their claims (Dkt. 161).

Plaintiffs have not identified in this list those exhibits that the parties have stipulated² will be trial exhibits because this Court ordered that “where the parties have stipulated to the admission of particular exhibits that Plaintiffs assert are legislative facts, this Court will receive those exhibits as part of the evidentiary record.” Dkt. 236, p. 5. Rather, this list includes those legislative fact exhibits identified by Plaintiffs that Defendants object to admitting into the evidentiary record as trial exhibits.

Plaintiffs respectfully submit that this is not an exhaustive list of the documents that this Court or a reviewing appellate court may rely upon in deciding issues in this case. *See* Dkt. 223.

COUNT III (Second Amendment Challenge to M114’s Magazine Prohibitions)

Question 1: Are the ammunition feeding devices that Measure 114 prohibits covered by the plain text of the Second Amendment?

Question 2: Are the ammunition feeding devices that Measure 114 prohibits “in common use”?

Question 3: Have Defendants proven that there is a longstanding historical tradition of banning ammunition feeding devices above a certain capacity for semi-automatic firearms?

Question 4: Have Defendants proven that ammunition feeding devices capable of accepting more than 10 rounds constitute a dramatic technological change or novel societal phenomenon that justifies a “more nuanced approach”?

COUNT IV (Fifth Amendment Takings Clause Challenge to M114’s Magazine Prohibitions)

Question 1: Does Measure 114 §11 effect a physical taking?

Question 2: Does Measure 114 §11 effect a regulatory taking?

COUNT V (Due Process Clause Challenge to M114’s Magazine Prohibitions)

Question: Do the confiscatory, retroactive aspects of Measure 114 §11 violate due process?

COUNT VI (Void-for-Vagueness Challenge to M114’s Magazine Prohibitions)

Question: Is Measure 114 §11 void for vagueness?

² Plaintiffs note that all parties have stipulated to the authenticity of the documents listed here.

Finally, for additional clarity, Plaintiffs submit that the legislative facts that may be considered in resolving Plaintiffs' claims may be found in court decisions and other documents beyond those listed below.

Defendants' response:

Defendants take the following position with respect to each of Plaintiffs' designations. Plaintiffs' proposed "legislative facts" are not proper legislative facts. As this Court explained in its June 2, 2023 Order (ECF 236), "legislative facts are not admissible to resolve disputed facts essential to the elements of Plaintiffs' claims unless they comply with the Federal Rules of Evidence." Each document described below is a hearsay article, study, or data set that Plaintiffs offer to resolve an essential element of Plaintiffs' claims. Plaintiffs' proposed "legislative facts" documents are authored by individuals who are not testifying in this case. Accordingly, these documents are inadmissible under the Federal Rules of Evidence. *See, e.g.*, FRE 802 (establishing general rule that hearsay "is not admissible"). Defendants reserve the right to respond to Plaintiffs' "legislative facts" with admissible testimony at trial or with post-trial briefing.

No.	Description	Defendants' Response(s)
16.	Meriwether Lewis's Air Gun, Michael F. Carrick, We Proceeded On, Lewis and Clark Trail Heritage Foundation (Nov. 2002), p. 15 (Carrick Ex. 2) Plaintiffs: Count III Q4 Court: Count III Q1c, Q2a	See above
18.	Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, Christopher S. Koper (July 2004) Plaintiffs: Count III Q2, Q3, Q4 Court: Count III Q1b, Q1c, Q2a, Q2b	See above

No.	Description	Defendants' Response(s)
20.	Firearm Examiner Training (2008), Glossary, Magazine Plaintiffs: Count III Q1 Court: Count III Q1a	See above
25.	The History of Firearm Magazines and Magazine Prohibitions, David B. Kopel (2014/2015) Plaintiffs: Count 1 Q2; Count III Q1, Q2, Q3, Q4 Court: Count I Q3; Count III Q1b, Q1c, Q2a, Q2b	See above
29.	Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources, Christopher Koper, et al. (2017) Plaintiffs: Count III Q1, Q2, Q3, Q4 Court: Count I Q3; Count III Q1b, Q1c, Q2a, Q2b	See above
30.	Estimating Global Civilian-Held Firearms Numbers, Aaron Karp (June 2018) Plaintiffs: Count III Q2 Court: Count III Q1b	See above
33.	Firearm Production in the United States, NSSF (2020) Plaintiffs: Count III Q2 Court: Count III Q1b	See above
46.	2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned, William English (May 13, 2022) Plaintiffs: Count III Q2 Court: Count III Q1b	See above

No.	Description	Defendants' Response(s)
47.	<p>Firearms Law and the Second Amendment: Regulation, Rights, and Policy, 3d ed. (2022 Suppl.), Nicholas Johnson, et al.</p> <p>Plaintiffs: Count 1 Q1, Q2; Count III Q1, Q2, Q3, Q4 Court: Count I Q2, Q3; Count III Q1a, Q1b, Q1c, Q2a, Q2b</p>	See above
53.	<p>The History of Bans on Types of Arms Before 1900, Kopel and Greenlee (2023)</p> <p>Plaintiffs: Count III Q1, Q2, Q3, Q4 Court: Count III Q1b, Q1c, Q2a, Q2b</p>	See above
76.	<p>Joseph Bilby, The Guns of 1864, in Am. Rifleman (May 5, 2014) Ex. 29 (<i>Duncan v. Becerra</i>, Case No. 3:17-CV-01017-BEN-JLB) 00487-497</p> <p>Plaintiffs: Count III Q4 Court: Count III Q1c, Q2a</p>	See above
87.	<p>John Elliot, A Sweeping History of the Mauser C96 Broomhandle Pistol, Guns.com (Jan. 26, 2012) Ex. 40 (<i>Duncan v. Becerra</i>, Case No. 3:17-CV-01017-BEN-JLB) 00612-624</p> <p>Plaintiffs: Count III Q4 Court: Count III Q1c, Q2a</p>	See above
90.	<p>Page 104 of Patrick Sweeney, Gun Digest Book of the AR-15 (2005) Ex. 43 (<i>Duncan v. Becerra</i>, Case No. 3:17-CV-01017-BEN-JLB) 00641-644</p> <p>Plaintiffs: Count III Q2, Q3, Q4 Court: Count III Q1b, Q1c, Q2a, Q2b</p>	See above

DATED: June 4, 2023

Paul D. Clement*
Erin E. Murphy*
Matthew D. Rowen*
Nicholas M. Gallagher*
Clement & Murphy, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900

* admitted *pro hac vice*

s/ Stephen Joncus
Stephen J. Joncus, OSB #013072
JONCUS LAW PC
13203 SE 172nd Ave Ste 166 #344
Happy Valley, OR 97086
(971) 236-1200
steve@joncus.net

JURISLAW LLP

s/ Daniel J. Nichols
Shawn M. Lindsay (OSB No.: 020695)
Daniel J. Nichols (OSB No.: 101304)
Three Centerpointe Drive
Suite 160
Lake Oswego, OR 97035
(503) 968-1475
shawn@jurislawyer.com

Counsel for Eyre Plaintiffs

s/ Leonard W. Williamson
Leonard W. Williamson, OSB #910020
VAN NESS WILLIAMSON LLP
960 Liberty St. SE, Ste 100
Salem, OR 97302
(503) 365-8800
l.williamson@vwllp.com

Counsel for OFF Plaintiffs

s/ James L. Buchal
James L. Buchal, OSB #910020
MURPHY & BUCHAL LLP
PO Box 86620
Portland, OR 97286
(503) 227-1011
jbuchal@mbllp.com
Counsel for Fitz and Azzopardi Plaintiffs

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2023, I have made service of the foregoing **PLAINTIFFS' LEGISLATIVE FACT EXHIBIT LIST** of the party listed below in the manner indicated:

Matthew D. Rowen
Erin E. Murphy
Nicholas M. Gallagher
Paul D. Clement
Clement & Murphy, PLLC
706 Duke Street
Alexandria, VA 22314
Attorney for Eyre Plaintiffs

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email:
matthew.rowen@clementmurphy.com;
erin.murphy@clementmurphy.com;
nicholas.gallagher@clementmurphy.com;
paul.clement@clementmurphy.com
☒ Electronically via USDC CM/ECF system

Jessica A. Skelton
Zachary J. Pekelis
Kai Smith
W. Scott Ferron
Pacific Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
*Attorney for Proposed Intervenor-Defendant
Oregon Alliance for Gun Safety*

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email:
jessica.skelton@pacificlawgroup.com;
zach.pekelis@pacificlawgroup.com;
kai.smith@pacificlawgroup.com;
scott.ferron@pacificlawgroup.com
☒ Electronically via USDC CM/ECF system

James L. Buchal
Murphy & Buchal
PO Box 86620
Portland, OR 97286
Attorney for Fitz Plaintiffs

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email: jbuchal@mbllp.com
☒ Electronically via USDC CM/ECF system

William Bergstrom
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, NW
Washington, DC 20036
Attorney for Fitz Plaintiffs

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email: wbergstrin@cooperkirk.com
☒ Electronically via USDC CM/ECF system

D. Angus Lee
Angus Lee Law Firm, PLLC
9105A NE HWY 99, Suite 200
Vancouver, WA
Attorney for Fitz Plaintiffs

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email: Angus@AngusLeeLaw.com
☒ Electronically via USDC CM/ECF system

James L. Buchal
Murphy & Buchal

☐ U.S Mail
☐ Facsimile

PO Box 86620
Portland, OR 97286
Attorney for Azzopardi Plaintiffs

- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: jbuchal@mbllp.com
- ☒ Electronically via USDC CM/ECF system

William Sack
Firearms Policy Coalition, Inc.
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Attorney for Azzopardi Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: Wsack@FPClaw.org
- ☒ Electronically via USDC CM/ECF system

Adam Kraut
Second Amendment Foundation
12500 NE Tenth Place
Bellevue, WA 98665
Attorney for Azzopardi Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: akraut@saf.org
- ☒ Electronically via USDC CM/ECF system

D. Angus Lee
Angus Lee Law Firm, PLLC
9105A NE HWY 99, Suite 200
Vancouver, WA
Attorney for Azzopardi Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: Angus@AngusLeeLaw.com
- ☒ Electronically via USDC CM/ECF system

Stephen J. Joncus
Joncus Law LLC
13203 SE 172nd Ave, Ste 166 #344
Happy Valley, OR 97086
Attorney for OFF Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: steve@joncus.net
- ☒ Electronically via USDC CM/ECF system

Leonard W. Williamson
Van Ness Williamson
960 Liberty Street S, Suite 100
Salem, OR 97302
Attorney for OFF Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: l.williamson@vwllp.com
- ☒ Electronically via USDC CM/ECF system

Pete Serrano
Silent Majority Foundation
5238 Outlet Drive
Pasco, WA 99301
Attorney for OFF Plaintiffs

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: pete@silentmajorityfoundation.org
- ☒ Electronically via USDC CM/ECF system

Jessica A. Skelton
Zachary J. Pekelis
Kai Smith
W. Scott Ferron
Pacific Law Group LLP
1191 Second Avenue, Suite 2000

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier
- ☐ Email: jessica.skelton@pacificlawgroup.com;

Seattle, WA 98101-3404
*Attorney for Proposed Intervenor-Defendant
Oregon Alliance for Gun Safety*

zach.pekelis@pacificallawgroup.com;
kai.smith@pacificallawgroup.com;
scott.ferron@pacificallawgroup.com
☒ Electronically via USDC CM/ECF system

Brian Simmonds Marshall
Oregon Department of Justice
Trial Division
Special Litigation Unit
100 SW Market Street
Portland, OR 97201
Attorney for Defendants

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email: brain.s.marshall@doj.state.or.us
☒ Electronically via USDC CM/ECF system

Erin N. Dawson
Hannah Hoffman
Harry B. Wilson
Markowitz Herbold PC
1455 SW Broadway, Suite 1900
Portland, OR 97201
Attorney for Defendants

☐ U.S Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Courier
☐ Email:
erindawson@markowitzherbold.com;
HannahHoffman@markowitzherbold.com;
harrywilson@markowitzherbold.com
☒ Electronically via USDC CM/ECF system

DATED: June 4, 2023

JURISLAW LLP

s/Daniel J. Nichols
Daniel J. Nichols (OSB No.: 101304)
Three Centerpointe Drive
Suite 160
Lake Oswego, OR 97035
(503) 968-1475
dan@jurislawyer.com
Counsel for Eyre Plaintiffs